

157. The Helgeson 1998 Declaration also states that Mr. Helgeson had assisted in an “ongoing effort to help Jeff Ramirez update the Station’s public inspection file in accordance with the rules of the FCC.” (SFUSD Exh. 4 at 74.) Mr. Helgeson’s statement refers to tasks assigned to him by Mr. Ramirez as part of completing the License Renewal Application in June/July 1997 and in response to the Berchenko Letter and Petition to Deny in October 1997 through January 1998. (Tr. 1165) (“I didn’t in anyway want to imply that it was, say, on day one he walked in the office and started. But since – since he had arrived he had – he had worked on it. And I was aware that he had worked on it in the time since he had arrived. And so that’s what – that – that was the implication of that statement.”); (Tr. 819) (“I agreed with that statement in my declaration because I assumed that that’s what Jeff was doing. I didn’t have an independent knowledge of the public – of the FCC rules. So I just assumed that Jeff was doing it in accordance with the FCC rules.”).

158. Mr. Helgeson also worked under Attorney Sanchez’s direction to “clean-up” the PIF prior to submission of SFUSD’s Opposition. Attorney Sanchez provided Mr. Helgeson with an inventory list to inform his efforts. (EB Exh. 10, 11.) Mr. Helgeson followed Attorney Sanchez’s instructions and reported to him on January 30, 1998 that the “clean-up” was complete. (Tr. 831) (referring to EB Exh. No.10).

159. With the benefit of eight years of hindsight, Mr. Helgeson now concedes that his 1998 Declaration could have been worded clearer. At the time, however, Mr. Helgeson’s focus was on determining how GGPR came to possess private, confidential documents. There is no evidence in the record that Mr. Helgeson intended in any way to mislead or withhold information regarding the maintenance of the PIF. (SFUSD Exh. T2 at 9.)

## **KALW BETWEEN JANUARY 1998 AND FEBRUARY 2001**

### **I. Additional Filings By SFUSD to the Commission**

160. In addition to GGPR's Petition to Deny, SFUSD's Opposition and GGPR's February 18, 1998 Reply (the "Reply"), the parties made several additional filings in this matter.

161. On February 9, 1998, SFUSD filed a Motion to Strike GGPR's subsequent (January 28, 1998) verifications amended to the Petition to Deny. GGPR filed an Opposition to the Motion to Strike on February 18, 1998. SFUSD filed a Reply on March 18, 1998.

162. In addition, on March 18, 1998, SFUSD filed a Motion to Dismiss the Petition. GGPR filed an Opposition on April 1, 1998.

163. SFUSD also filed a Motion to Strike GGPR's Reply and a "Motion to Place Under Seal, Redact, or Remove Exhibit" certain proprietary information contained in GGPR's Reply. *HDO* at 1.

### **II. Operation of KALW from January 1998 to Early 2001**

164. GM Ramirez departed the Station at the end of January 1998, for a position at the Corporation for Public Broadcasting ("CPB"). (SFUSD Exh. T1 at 19-20.) At the time Mr. Ramirez left KALW, Mr. Helgeson had been working at the Station for many years in an administrative support capacity. (SFUSD Exh. T2 at 3) ("I handled a wide variety of miscellaneous clerical and administrative duties, basically taking on any task that the General Manager asked me to take care of. This has remained my role throughout my time at KALW...."). SFUSD asked Mr. Helgeson to "stand-in" as interim-general manager, to maintain

the operations of the Station, until a permanent GM was hired. (Tr. 624) (“I considered [myself] a stand-in until the state – the school district hired a new general manager.”)

165. Mr. Ramirez’s tenure at KALW was summarized in a report he prepared for the District upon his departure. (SFUSD Exh. 8.)

166. Foremost among the successes during this period identified by Mr. Ramirez was his successful stewardship over the Station’s physical relocation in December 1996 to new offices and broadcast facilities at Burton High School. During the move KALW never went off the air. (SFUSD Exh. 8 at 1.) Through arrangements with another radio station in the San Francisco, KALW continued to broadcast while their own studio furniture and equipment was packed, moved, unpacked, installed, and tested at a new facility. (SFUSD Exh. 8 at 1.)

167. During GM Ramirez’s management, KALW’s weekly cumulative audience increased from an average of 106,200 to over 132,000 – an increase of over thirty-percent. (SFUSD Exh. 8 at 1.)

168. Significant programming changes were implemented that improved audience service as Mr. Ramirez continued KALW’s move towards providing outstanding noncommercial arts, cultural and music programming in the San Francisco Bay Area. (SFUSD Exh. 8 at 1.)

169. The number of subscribers and overall fundraising also rose during Mr. Ramirez’s tenure. The Spring 1997 fund drive was the largest in the Station’s history. By the Fall of 1997, over 53% of contributions to the Station were coming from new subscribers. (SFUSD Exh. 8 at 1.)

170. GM Ramirez also oversaw the growth of a successful underwriting programming, an increased emphasis on original local programming and student services. (SFUSD Exh. 8 at 2.)

171. The Station's advancements were entirely self-financed. SFUSD did not, and has not provided any direct cash subsidies to the Station. (SFUSD Exh. 8 at 2.) While SFUSD provides in-kind support in the form of space, basic utilities, and facilities support, the Station's spending budget is based on listener support and grants. (Tr. 251) (Q: During your tenure, was the radio station a financial drain on the School District [.]? A: No, by the time I got to the radio station, the School District wasn't providing any direct cash subsidy to the radio station.)

172. When Mr. Helgeson "stood-in" as the interim-GM, his responsibilities did not change very much from his position as Operations Manager. The responsibility of the Operations Manager was to keep the station on the air. Mr. Helgeson's directive was to continue that effort. He was not asked, and did not portend to initiate any programming, fundraising or other management-style changes at the Station. (SFUSD Exh. T2 at 6-7.)

173. Over the years Mr. Helgeson had served many roles at the Station. He began as a Station volunteer, became a Clerk Typist, and then became the Operations Manager, with his principal duties being clerical and administrative tasks at the direction of the Station's GM. Mr. Helgeson had no interest in taking on the very different responsibilities of the GM and did not ask to be considered for that role. (SFUSD Exh. T2 at 3; Tr. 623-24.)

174. SFUSD employed Michael Johnson as GM from mid-1998 to September of 2000. (EB Exh. 40 at 4.) In mid-2000, when it became known that the District would not be renewing the one-year contract of then GM Michael Johnson, the District began a comprehensive effort to find a permanent GM. (Tr. 626.)

### **III. The Recruitment and Hiring of Nicole Sawaya as General Manager**

175. In the late summer of 2000, KALW began its search for a new, permanent GM. (SFUSD Exh. T3 at 5.)

176. The candidate the District selected was Nicole Sawaya. (SFUSD Exh. T3 at 5; SFUSD Exh. T4 at 3.)

177. Ms. Sawaya brought to KALW deep roots in the San Francisco Bay community and a résumé of senior management positions at public radio stations – both larger and smaller than KALW – throughout Northern California. (SFUSD Exh. T3 at 2-4.)

178. Ms. Sawaya earned a degree in broadcasting from San Francisco State University and began her public broadcast career at KQED(FM), the largest public radio station in San Francisco, where she worked for several years as an independent producer and journalist. (SFUSD Exh. T3 at 2.) After receiving her degree, she was hired as the Program Director and later Station Manager, of KZYZ(FM), a rural public radio station in the North Bay. (SFUSD Exh. T3 at 3.)

179. Like Mr. Ramirez, Ms. Sawaya also belonged to the small group of public radio managers selected to participate in the Next Generation Project, the CPB program whose purpose was to groom mid-level managers into leadership roles within public broadcasting. (Tr. 1262-63.)

180. Ms. Sawaya's career in public broadcast included a position at National Public Radio ("NPR") in Washington, D.C. At NPR Ms. Ms. Sawaya was responsible for overseeing NPR's relationship with member stations on the West Coast, including those in the San Francisco area. (Tr. 1258.)

181. Ms. Sawaya returned to San Francisco when she received an offer to serve as the GM of KPFA(FM) in Berkeley, California. At KPFA Ms. Sawaya oversaw a staff of approximately twenty-eight payroll employees and between twenty and twenty-five regular station volunteers. (SFUSD Exh. T3 at 3.)

182. Following her work at KPFA, Ms. Sawaya continued to work in the public arts community in San Francisco as a media consultant to the Pacific News Service. (SFUSD Exh. T3 at 4.)

183. After completing the District's GM application in approximately August 2001, the ultimate filling of the GM position extended over several months during the end of 2000 and early 2001. There were several rounds of panel interviews and ultimately a one-on-one interview with the recently appointed Superintendent of the District, Dr. Arlene Ackerman. (SFUSD Exh. T3 at 5.)

184. Ms. Sawaya was ultimately offered the GM position at KALW in mid-February 2001, and, upon giving two-weeks notice to the Pacific News Service, began at KALW on March 1, 2001. (SFUSD Exh. T3 at 5.)

### **THE FEBRUARY 2001 LETTER OF INQUIRY**

#### **I. The February 2001 Letter of Inquiry Sought an Explanation as to Compliance With the PIF Rule**

185. Almost concurrently with the final hiring of Ms. Sawaya, the Sanchez Law Firm received a Letter of Inquiry from the Media Bureau of the Commission dated February 5, 2001 (the "LOI"). (EB Exh. 14.) The LOI called for a response within thirty (30) days – i.e., March 5, 2001.

186. According to the Sanchez Law Firm Slip Listings, it was not until February 17, 2001, that Attorney Jenkins forwarded the LOI to Mr. Helgeson with instructions to call Attorney Sanchez upon receipt. (EB Exh. 35 at Entry for 2/17/2001; EB Exh. 14; Tr. 864.)

187. At that time, Mr. Helgeson was again serving as "stand-in" GM until a permanent GM started. There is no evidence that the LOI was forwarded to any SFUSD officials. (See EB Exh. 35.)

188. The LOI asked several questions related to KALW's PIF:

- (1) On August 1, 1997, when the subject license renewal application was filed, did the KALW public inspection file contain all of the ownership and supplemental ownership reports required to be kept by then Section 73.3527?
  - (a) if the answer is "no," detail any such omission or deficiency. If the answer is "yes," please include a copy of each such report with the response to this inquiry letter.
- (2) On August 1, 1997, did the KALW(FM) public inspection file contain all of the issues program lists required by then Section 73.3527? Did any lists that were in the file contain the information required by Section 73.3537?
  - (a) if the answer is "no," detail any such omission or deficiency. If the answer is "yes," please include a copy of each such report with the response to this inquiry letter.
- (3) On August 1, 1997, did the KALW(FM) public file contain a complete listing of donors supporting specific programming, as required by then Section 73.3527?
  - (a) If the answer is "no," detail any omission or deficiency.
- (4) If the answer to any of the above questions is "no," detail when and precisely what steps were instituted to correct any problems and ensure that the public inspection file contained all requisite materials.

(5) As of the date of this letter, is the KALW(FM) public inspection file now complete?

(a) If the answer to any of questions 1-3 above is "no," and presuming that the public inspection file is now complete and current, give the date on which the KALW(FM) public inspection file contained all required materials.

## **II. The Sanchez Law Firm Coordinated KALW's Efforts to Update the PIF**

189. Following Attorney Sanchez's instructions to "call after you have received this," Mr. Helgeson called the Sanchez Law Firm on February 19, 2001 to receive further instructions. (EB Exh. 14; EB Exh. 35 at 1; Tr. 884-85.)

190. In responding to the LOI, Attorney Sanchez instructed Mr. Helgeson, who acted as the day-to-day point person. (Tr. 886-87) ("What I recall is reading the, reading the document and then immediately calling them and saying, okay, now what? What do we do? You're my attorneys. What should I do here? What are we going to do? And then we had a conversation, that they needed to – they were expected – from getting this letter, they were expected to file a response to it. And that we needed – they needed – and I would help them in responding to it. Whatever I could.")

191. Attorney Sanchez asked Mr. Helgeson to review and update the PIF while Attorneys Sanchez and Jenkins prepared the response. (Tr. 1097) ("They wanted me to make sure that the public file was up to date currently, and that's what I did...I totally relied on them for, you know, my actions regarding this matter. And they took whatever information I reported back to them what I had done. And if they had any input, I – I did whatever – whatever...input they gave me and followed it back.")



192. Toward that end, Mr. Helgeson reviewed the contents of the PIF in February 2001 and reported back to the Sanchez Law Firm. (Tr. 690) ("I pulled out whatever was in there and I reported that back to our attorneys in a phone conversation.") (SFUSD Exh. 14; SFUSD Exh. T2 at 11-12.)

193. After Mr. Helgeson reported what he found in the PIF, Attorneys Sanchez and Jenkins instructed Mr. Helgeson to bring the PIF up to date. (Tr. 1096) ("What they told me was the FCC wants to make sure the public file is fine now, complete. And to inspect the public file. And I told them what I found. And what they wanted me to do was bring the file up to date and complete now. And that's – that is what I did.")

194. After consulting with the Sanchez Law Firm, Mr. Helgeson and a volunteer prepared labeled file folders for each quarter between 1992 and 2000. (Tr. 685-87.)

195. The KALW Program Guide is a twenty to thirty page printed volume that contains the Station's broadcast line-up for each calendar quarter and includes the title of each program, detailed descriptions of the program, and if appropriate, who the guest would be. (Tr. 266.) The Program Guide includes features on particular shows, describes changes in programming, and provides the reader with updated information on activities at the Station, including fundraising efforts. (SFUSD Exh. T3 at 21.) The Program Guide is mailed to every member of KALW with additional copies distributed at government and school district buildings and at other meeting places throughout the listening area. (SFUSD Exh. T3 at 21.) One of the purposes of the Program Guide is to provide readers with information about KALW programming and how that programming is meeting the needs of the community. The Program Guide also solicits feedback from listeners. (SFUSD Exh. T3 at 21; SFUSD Exh. T2 at 13.)

196. For several quarters, the Station's Program Guide was then in the PIF. (Tr. 683) ("At that time in late February, early March [2001], I had a volunteer who was assisting me and at that point since we were operating on the – we had found program guides in the Public File ... it seemed to be that there were some. We tried to see if there was one for every quarter and up to 2001 and we did seem – there seemed to be – there were some holes in that list[.]")

197. However, while there were several quarterly Program Guides in the PIF, not every quarterly guide was then in the PIF. (Tr. 683-84.)

198. Mr. Helgeson and the volunteer removed all copies of the Program Guides from the quarterly files and replaced them with copies from Mr. Helgeson's personal set. (SFUSD Exh. T2 at 13.) Mr. Helgeson had always maintained a set of KALW Programs Guides as part of his responsibilities as the Station's operations manager. These were kept in his private storage files and he labeled them "Bill's Copy" to insure that he would always have a complete set. (SFUSD Exh. T2 at 13.) Mr. Helgeson proposed that, rather than possibly have repetitive copies of the Program Guide in the PIF, he and the volunteer would instead remove all the Program Guides then in the file and place Mr. Helgeson's complete set in the PIF into the quarterly folders they prepared. (Tr. 684-85) ("We knew there should be four for every year and we seemed to find holes in some quarters. ... The most reasonable place to fill those holes was going to be from my collection of old program guides and so rather than just picking up one and two out of whatever, how many they needed from my collection and then making my collection incomplete, I said – I did or I asked my volunteer to just slip one in for each of the appropriate quarters.") (Tr. 685) (Q: Was the volunteer directed to take a program guide out that didn't have Bill's copy already written on it? A: As I recall, that's what we did. We didn't see the

point in having two copies of any one particular guide – edition of a guide in [the PIF]. So, if there was one in there already, she pulled that one out and replaced it with the one that's marked Bill's copy.)

199. Mr. Helgeson also observed that the PIF contained various issues/programs lists -- quarterly lists identifying specific programming that aired on KALW and the community interest served by that program. (Tr. 689) ("I believe there were other documents that we had found in [the PIF] that covered perhaps various shows, various periods of time, but I don't recall specifically which ones they were. As best we could, we tried to put them in the appropriate quarterly folder when we had them.")

200. Mr. Helgeson also supplemented the PIF with quarterly issues/programs lists relating to NPR programs that aired on KALW since 1992. These lists were on the NPR website and were downloaded by Mr. Helgeson in March 2001. (Tr. 688) ("What I started doing was, for each quarter ... we printed out that National Public Radio quarterly issues programs list and then went and on the front of it marked -- indicated with a cover sheet which of those National Public Radio programs we always carried on KALW ... I wanted to make it clear from the document that KALW carried [that particular program].") Mr. Helgeson did not attempt to hide the fact that these documents were newly downloaded, and the download date [3/14/01] is plainly visible on each list. (SFUSD Exh. T2 at 13; *see, i.e.*, EB Exh. 44 at 26-44, 82-83.)

201. Mr. Helgeson consulted with Attorneys Sanchez and Jenkins regarding the placement of NPR lists in the PIF in March 2001. (Tr. 1096) ("The NPR lists that are referred to in here were lists--were documents that I placed into the file that I didn't find there on my inspection in February. And we collected the data and placed these documents in the file during

the period of March 2001. Those documents actually are dated that date as well. And that's what I referred—that's what I told our attorneys. This is what—I told them the actions that I was up to and what I did, and they concurred. And if they had told me not to do that, I would not have done it.")

202. Mr. Helgeson spoke to Attorney Jenkins at the Sanchez Law Firm in a telephone conversation in March 2001. Attorney Jenkins's notes from the telephone call with Mr. Helgeson are dated March 29 or 30, 2001, and include a heading that reads "Issues/Programs lists." Under this heading is the statement "Need these for every quarter since Aug. 1990," and below there is a list of years from 1991 through 2001. Next to this list of years, Ms. Jenkins wrote the statement "All done now." (EB Exh. 25.)

203. Mr. Helgeson interpreted Attorney Jenkins's notes from their telephone call to mean that Mr. Helgeson had reported to Attorney Jenkins that he was "all done now" with his project to bring the PIF up to date pursuant to their instructions. (Tr. 1178) ("[A]s far as I can interpret this is regarding me possibly reporting back to her on the status of the project I had been charged with by them as far as making sure the public inspection file was complete and up to date now, up to date being 2000—as far into 2001 as we could at that point.") Likewise, Mr. Helgeson informed Attorney Jenkins at that time that the Ownership Report for 1995 was signed in December 1997. (EB Exh. 25.)

204. Mr. Helgeson made no attempt to change the date of download (3/14/01) printed on the NPR quarterly programs lists placed in March 2001 in the PIF, including the sample list provided to the Sanchez Law Firm to file with the April 2001 Response. (*See, e.g.*, EB Exh. 34 at 71-82.) Likewise, the notes of Attorney Jenkins of her March 2001 conversation with

Mr. Helgeson that the issues/programs lists were "All done now," and that the 1995 Ownership Report was dated December 10, 1997 is consistent with Mr. Helgeson's testimony that he discussed with the Sanchez Law Firm that there were missing items from the file and he would recreate records to bring the PIF up-to-date. (EB Exh. 25; SFUSD Exh. T2 at 12.)

205. The process of adding materials to the PIF in order to bring it up to date was ongoing when Ms. Nicole Sawaya began as GM of the Station on Thursday, March 1, 2001. (SFUSD Exh. T3 at 7.)

### **III. Helgeson Had No Knowledge of the Contents of the PIF as of August 1, 1997**

206. With respect to responding to the LOI questions regarding the status of the PIF on August 1, 1997, Mr. Helgeson did not have first-hand knowledge of the state of the PIF at that time because he was not directly involved in the preparation of the License Renewal Application responses and had not reviewed at that time the contents of the PIF. (SFUSD Exh. T2 at 7.)

207. In October 1997, when Mr. Ramirez determined that the License Renewal Application may have contained inaccuracies, he reported directly to Attorney Sanchez. Mr. Helgeson was not involved in any substantive way in the evaluation of the Berchenko Letter nor in preparing the Station's Opposition. (SFUSD Exh. T2 at 8.)

208. Mr. Helgeson was asked to execute a Declaration supporting the Station's Opposition. As noted above, that Declaration related primarily to GGPR's infiltration of private, confidential documents and e-mails at the Station, including Mr. Helgeson's personal files. (SFUSD Exh. 4 at 74-75.) Mr. Helgeson understood that the sole purpose of his Declaration was to establish that GGPR had obtained his private files without his permission and used them in conjunction with the Petition to Deny (Tr. 1161, 1163-1164). There is no evidence that

Mr. Helgeson was privy to discussions about how his declaration fit into the Sanchez Law Firm's strategy or was aware that his declaration could relate to the Station's disclosure to the Commission that the August 1, 1997 certification may have contained a mistake—in fact, Mr. Helgeson was never even provided a copy of the Ramirez January Declaration or told of its contents before executing his own Declaration. (Tr. 979-80.)

209. Mr. Helgeson has always served the Station's day-to-day operations needs but has never assumed any managerial role with respect to the PIF, the legal positions taken by the Sanchez Law Firm, or the communications between the Sanchez Law Firm and the Commission. (SFUSD Exh. T2 at 5.)

210. In fact, under questioning by the Presiding Judge regarding his understanding of the nature of the attorney-client relationship and the client's authority thereunder, Mr. Helgeson stated: "Your honor, as far as I don't -- he was our legal expert. So I -- what's the word I'm looking for? I -- deferred to him in legal matters obviously and so if he wanted -- if he decided -- if he suggested we get an extension -- if he made that suggestion to KALW or SFUSD then I guess chances are we would have gone with it given, we figure, Ernie's the expert." (Tr. 934-35.)

211. With respect to any information regarding the status of the PIF as of August 1, 1997, Mr. Helgeson knew only of Mr. Ramirez's "Yes" certification in the License Renewal Application that the file was complete at that time. (Tr. 752) ("After Golden Gate Public Radio filed its challenge, and I became aware of that from speaking in conversation with Jeff Ramirez, I never had a -- I never made a comment to him about that -- whether -- about checking the box [on the License Renewal Application]... in any way. I just operated under the assumption that [Mr. Ramirez] had done everything correctly.")

212. Mr. Helgeson was also aware that in the weeks and months that followed the filing of the License Renewal Application, members of GGPR had pillaged through the Station's confidential and private files – including his own – and had used those documents as part of their Petition to Deny. (SFUSD Exh. 4 at 74-75.) He did not know whether GGPR's unauthorized removal of private documents included removal of documents from the PIF – but he assumed that all of the Station's critical files (of which the PIF was one) had been searched and possibly pilfered. (Tr. 767) (“At the time after the challenge was filed by Golden Gate Public Radio, we knew that part of their challenge had been made up of documents, both from private files and that documents had been gone -- my private files had obviously been looked at ... [T]here were also charges about documents not being in the Public File that should have been in there. We assumed – I assumed, I should say – that since my documents, my files, my private files had been gone through, that the Public File had been gone through also by either Golden Gate Public Radio principals or friends of Golden Gate Public Radio. So at that point, when it was – if there was a question about a missing document in late '97 that should have been in the file, I operated from the assumption at that time up through the time of the response to GGPR's petition that we filed in early '98. I operated from the position that it had been taken from the Public File, just like documents obviously had been lifted from my personal, excuse me, from my private file.”)

213. Mr. Helgeson was never informed by Attorney Sanchez as to the contents of Mr. Ramirez's October 1997 memo – and Mr. Helgeson was also unaware of the content of Mr. Ramirez's 1998 Declaration which acknowledged that Mr. Ramirez misunderstood the FCC requirements associated with his certifications in the 1997 License Renewal Applications. (SFUSD Exh. T2 at 15-16; Tr. 979-80, 1186-87, 1197.) Indeed, at hearing, Mr. Helgeson

testified under cross-examination that he was *still* unaware that Mr. Ramirez had acknowledged that he made mistakes when preparing the certification on the 1997 License Renewal Application. (Tr. 771) (“[T]o this day I have no basis for saying that Jeff had incorrectly filled out – incorrectly filled out the renewal documents.”)

214. With respect to the accuracy of the August 1, 1997 certification – Helgeson heard nothing to change his understanding that the License Renewal Application was correct. (Tr. 979) (“I had no way of knowing that he wasn’t correct in answering that question in August of ’97. So answering the question in 2001 I had really nothing else to – I wouldn’t have made it a different answer in 2001. Again, the attorney certainly knew what Jeff’s answer was in 1997 regarding that, so I was always, again, under the impression that when reviewing the file in late ’97, and he said that there was something – he said something wasn’t there. We again thought it was again people who had been going through my private files in that public file drawer.”)

#### **IV. Ms. Sawaya’s Tenure Began Approximately One Month After Receipt of the LOI And Many Urgent Matters Required Her Attention**

215. Ms. Sawaya began as GM of KALW on Thursday, March 1, 2001, approximately one month after the LOI was received and just five days before it was initially due.<sup>3</sup> The new GM of a radio station assumes a large amount of administrative responsibility and KALW was no exception. Ms. Sawaya, who had not worked at KALW before, believed it was also very important to promptly introduce herself to as many of the Station’s staff and volunteers as

---

<sup>3</sup> On March 6, 2001, the Sanchez Law Firm requested a 30-day extension for the response to the LOI. (EB No. 16.)



possible. Most of her first days were spent literally walking around the Station, introducing herself to the staff and finding out what each person did. (SFUSD Exh. T3 at 6.)

216. There were two urgent matters that required Ms. Sawaya's immediate attention. The first was the annual spring fundraising drive. Preparation for the Spring Drive usually begins months in advance but it was critical to put the drive on the air as soon as possible. After weeks of intense preparation and promotion, KALW conducted a late-Spring Drive in June 2001. (SFUSD Exh. T3 at 6.)

217. The second urgent matter was completing the CPG Annual Activity Survey. CPB is a significant funding source for the Station and in the period of interim management, the Station's submissions had become past due. (SFUSD Exh. T3 at 6.)

218. Ms. Sawaya also had to address several immediate programming issues. The former GM had removed a popular show against the vocal opposition of many listeners and staff. Several of Ms. Sawaya's first days were spent discussing this particular show with constituents, producers and other staff – ascertaining the facts and determining what to do. (SFUSD Exh. T3 at 7.)

219. March 1, 2001 was also the regular deadline for going to print with the Station's spring/summer Program Guide. (SFUSD Exh. T3 at 7.)

220. Ms. Sawaya convened her first staff meeting for Friday, March 2, 2001. (SFUSD Exh. T3 at 6.)

221. In short, the new GM of KALW had a full plate of urgent matters to address in her first days at the Station. (SFUSD Exh. T3 at 7.)

**V. Ms. Sawaya Learned About the LOI Within Days of Starting as GM and Took Immediate Action**

222. Either on her first or second day on the job, Ms. Sawaya observed Mr. Helgeson working at a file cabinet near his desk. Mr. Helgeson informed Ms. Sawaya that there had been a license challenge against the station pending since 1997 and that he was working to complete the PIF. Ms. Sawaya was shocked. (SFUSD Exh. T3 at 7.)

223. Mr. Helgeson explained that the license challenge had been dormant for almost four years but now, literally weeks before her start date, the FCC had sent the Station a LOI. Ms. Sawaya knew the seriousness of a license challenge and the importance of bringing the matter to closure. Ms. Sawaya directed Mr. Helgeson to immediately coordinate a phone call with the Station's counsel (who she later learned to be the Sanchez Law Firm) so that she could be informed as to what was going on and how she could help. On March 2, 2001, just her second day on the job, Ms. Sawaya, Mr. Helgeson, Attorneys Sanchez and Jenkins convened a conference call. (SFUSD Exh. T3 at 7.) Ms. Sawaya was also provided a copy of the LOI. (SFUSD Exh. T3 at 8.)

**VI. Ms. Sawaya's March 8 Memo to Mr. Sanchez Provided Her Initial Impressions As to How the LOI Should Be Answered**

224. As the majority of matters in the LOI addressed events that far pre-dated Ms. Sawaya's arrival at the Station, she was in no position to take a leadership role or contribute to the substantive response. Nonetheless, she recognized the importance of a prompt and thorough response to the Commission and therefore sought to invigorate the Station's efforts to resolve the license challenge. (SFUSD Exh. T3 at 7-8.)

225. Ms. Sawaya's pedigree is that of a take-charge, hands-on manager and upon reviewing the LOI, she asked Mr. Helgeson to show her the PIF. (SFUSD Exh. T3 at 8.)

Ms. Sawaya is not an FCC regulatory expert but she knew the requirements of a PIF and wanted to examine for herself the contents of the file. (SFUSD Exh. T3 at 8.)

226. Ms. Sawaya prepared notes as to how she believed the LOI questions should be answered based on her March 2001 review of the PIF. Ms. Sawaya's e-mail account was not yet active so she transmitted her initial impressions to Attorney Sanchez in the form of a brief, single-page memo. She drafted the memo on March 8, 2001 (the "March 8 Memo"), placed it in an envelope with a short transmittal letter (EB Exh. 20), and mailed it via regular post. (EB Exh. 21.) After taking these steps to start the LOI response process, Ms. Sawaya had no other discussion with Attorney Sanchez or Jenkins regarding her March 8 Memo. (Tr. 1399.) Ms. Ms. Sawaya did not retain a paper copy of the March 8 Memo or share copies with anyone else. (Tr. 1367-68.)

227. The March 8 Memo codifies Ms. Sawaya's initial impressions as to how the LOI should be responded to based on her own review of the PIF in her first days at work, and the small amounts of historical background she received from Mr. Helgeson and Attorney Sanchez. (EB Exh. 21.) Ms. Sawaya understood and agreed, however, that Attorney Sanchez would take the leadership role in SFUSD's ultimate response to the LOI. (Tr. 1398-99) ("[Sanchez] was really taking a leadership role. I trusted his expertise and his long-time engagement with KALW and SFUSD as FCC counsel.")

228. In response to LOI Question No. 1, which asked whether the PIF was complete as of August 1, 1997 with respect to Ownership Reports, Ms. Sawaya noted "NO," indicating that

her impression was that the requisite ownership reports were not present in the PIF on August 1, 1997. (EB Exh. 21; SFUSD Exh. T3 at 11.)

229. Ms. Sawaya further commented in response to LOI Question 1 that: "Missing was: ownership report January 31, 1993 – was put in the file December 10, 1997. Missing was ownership report January 31, 1995 – was put in file December 10, 1997. (see enclosed copies). Also missing were January 31, 1999, July 31, 2000 and January 31, 2001. These have been filled out and signed. Enclosed are originals." (EB Exh. 21.) 4/

230. With respect to the 1993 and 1995 Ownership Reports, Ms. Sawaya's observations in March 2001 confirm what Mr. Ramirez described in his October 1997 Memo and in his January 1998 Declaration – namely, that after preparing the License Renewal Application for signature in July 1997, he learned that Ownership Reports for 1993 and 1995 should have been in the PIF. Messrs. Ramirez and Helgeson completed those reports in December 1997 and they were dated and executed on December 10, 1997 by an SFUSD official. Copies were then placed in the PIF. (EB Exh. 21.)

231. There is no evidence that Ms. Sawaya reviewed the License Renewal Application certification, Mr. Ramirez's October 1997 Memo or Mr. Ramirez's January 1998 Declaration prior to drafting the March 8 Memo. Ms. Sawaya simply looked at the Ownership Reports in the PIF and noted that they were dated December 10, 1997 – years later than they should have been prepared and placed in the PIF. (EB Exh. 21; SFUSD Exh. T3 at 11.)

---

4/ The copy of the March 8 Memo entered into the record, EB Exh. 21, did not include the referenced copies of the ownership reports.

232. With respect to Ownership Reports for 1999, 2000 and 2001, Ms. Sawaya's notes similarly described what she observed and was confirmed by Mr. Helgeson – that in “cleaning-up” the PIF in response to the LOI, SFUSD had prepared Ownership Reports for the interim years. (SFUSD Exh. T2 at 12-13.) Like the 1993 and 1995 reports, these reports were not back-dated nor in any way prepared in a manner that would suggest they had been in the PIF all along. (EB Exh. 21) Rather, the Ownership Reports for 1999, 2000 and 2001 were dated March 7, 2001 and executed by Jackie Wright, Executive Director of SFUSD's Office of Public Engagement. (EB Exh. 21.)

233. Ms. Sawaya's March 8 Memo to Attorney Sanchez enclosed the originals of the 1999, 2000 and 2001 ownership reports in order that they could be filed by the Sanchez Law Firm with the Commission. (EB Exh. 21 at 2-7.) Ms. Sawaya also confirmed in the March 8 Memo that Mr. Helgeson had placed copies of these reports in the Station's PIF.

234. In response to LOI Question No. 2, as to whether the PIF was complete with respect to issues/programs lists as of August 1, 1997, Ms. Sawaya again answered “No,” in her March 8 Memo indicating her impression that all the requisite issues/programs lists were not in the PIF for the period up to August 1, 1997. (EB Exh. 21; SFUSD Exh T3 at 11.) In Ms. Sawaya's further response on the March 8 Memo, she stated:

The premises of KALW(FM), were almost entirely destroyed during the Loma Prieta earthquake in the Fall of 1989 in San Francisco. Until the beginning of 1997, when KALW moved to its current location (Philip & Sala Burton High School), the station was moved several times to temporary facilities. During this period, KALW was operating out of a variety of abandoned school gyms. Many day-to-day operations did not happen during this period, and the record-keeping ability of the station was severely hampered by the constant changing of locations. Most files and paperwork were kept in boxes, some of which were lost as moves

kept occurring. Unfortunately, the public file of issues/programs was susceptible to the physical chaos at the station.

235. Ms. Sawaya, of course, was not present at KALW on August 1, 1997, and did not consult with then-General Manager Jeffrey Ramirez in forming this impression. Her response reflects a historical narrative the Ms. Sawaya learned in conversation with Mr. Helgeson. (Tr. 1356-57.)

236. Ms. Sawaya did not attempt to mislead or conceal anything in the March 8 Memo. Rather, she candidly disclosed her assumption that given the current state of the PIF, it would not have been maintained in accordance with Section 73.3527 during the license term. (EB Exh. 21.)

237. In response to LOI Question No. 3, regarding listing of donors supporting specific programming, Ms. Sawaya's March 8 Memo to Attorney Sanchez answered: "KALW does not have donor-specified support for programs. Listeners express their preference for programs as they pledge money during station on-air drives, but no program receives direct donations or financial support." (EB Exh. 21.) In other words, KALW was not required to maintain the documents identified in Question 3 because the Station did not permit programming-specific donations.

238. With respect to LOI Question No. 4, regarding steps instituted at the Station to correct any problems with the PIF, Ms. Sawaya's March 8 Memo stated: "KALW did ownership reports for 1993 & 1995, and we have brought all ownership reports up to date, with the most recent being January 31, 2001. KALW's reports were spottily corrected during the late 1990's. However, all reports were corrected in the Fall of 1997 when matters came to the attention of then general manager, Jeff Ramirez." (EB Exh. 21.)

239. Finally, with respect to LOI Question No. 5, regarding the present status of the PIF, Ms. Sawaya's March 8 Memo to Attorney Sanchez states: "Ownership reports are now completed and current. Donor support for specific programs is non-applicable. Issues and program listings are current, and back listings are in the process of being completed to the best of our ability." (EB Exh. 21.) This report is consistent with the ongoing work by Attorney Sanchez and Mr. Helgeson to complete the PIF and bring it current prior to responding to the LOI. Ms. Sawaya was not directly involved in these efforts but had observed in her first few days as the Station's GM that this process was moving forward. (SFUSD Exh. T3 at 12.)

240. Ms. Sawaya mailed the March 8 Memo to Attorney Sanchez on March 8, 2001, and the billing records of the Sanchez Law firm establish that it was reviewed by Attorney Jenkins on March 15, 2001. (EB Ex. 35 at 1.)

**VII. After the March 8 Memo, Ms. Sawaya Played No Role in the Preparation of the LOI Response**

241. Ms. Sawaya believed that the first priority of the Station must be to respond to the LOI in a timely and accurate manner. Because she was new to the Station and not present for the events discussed in the LOI, Ms. Sawaya took on the role of administering the process -- confirming that Mr. Helgeson continued to work with the Sanchez Law Firm to provide the information necessary to prepare a response and for the Station to bring its PIF into full compliance. (SFUSD Exh. T3 at 7-8, 12-13) ("I did not know the relevant historical facts, and I was not a lawyer, so any role I could play would be limited primarily to administration.")

242. Following the preparation of her March 8 Memo, Ms. Sawaya turned her attention to the myriad of significant matters that required the immediate attention of the new GM. One of

those items was the going forward maintenance of the PIF. Thus, when Mr. Helgeson completed his review and updating of the PIF, Ms. Sawaya had the file moved from the open area near Mr. Helgeson's desk into her own office and took steps to make sure that going forward, the PIF would reflect all public affairs programming. (SFUSD Exh. T3 at 13-14.)

243. Beyond the LOI response, Ms. Sawaya had significant concerns about the license renewal challenge generally. On several occasions in March and April 2001, Ms. Sawaya discussed with Attorneys Sanchez and Jenkins, as well as Jackie Wright, SFUSD's liaison between the Station and the Superintendent, of the need for the Sanchez Law Firm to provide a comprehensive report for the Superintendent as to what the license challenge meant and the steps to be taken to bring this long-running issue to resolution. (SFUSD Exh. 20; SFUSD Exh. T3 16.) These conversations are reflected in Sanchez Law Firm slip listings dated March 16, 2001 ("Telephone conference with Ms. Sawaya"), April 5, 2001 ("work on legal summary report to Ms. Sawaya and Mr. Campos re GGPR history and problems"), April 11, 2001 ("Revise and send memo and attachment list re GGPR history to Ms. Sawaya.") (EB Exh. 35.) Ms. Sawaya also made preparations for Attorneys Sanchez and Jenkins to brief herself and the Superintendent's staff on counsel's efforts to resolve the license challenge. (EB Exh. 30.)

244. Prior to Ms. Sawaya's arrival on March 1, 2001, there is no evidence in the Sanchez Law Firm slip listings that any District official was informed by the Sanchez Law Firm about the LOI. (EB Exh. 35.) However, on March 26, 2001, Ms. Sawaya sent an e-mail to Attorney Sanchez requesting a status report and directing that Ms. Wright and David Campos (counsel from the City Attorney's Office delegated to assist in District matters) be copied on the LOI response to provide feedback prior to filing. (SFUSD Exh. 23.)



**VIII. The Sanchez Law Firm Circulated a Draft Response to the LOI 48 Hours before the Deadline to Respond**

245. The draft response to the LOI was prepared entirely by the Sanchez Law Firm and was circulated by e-mail by the Sanchez Law Firm on the evening of April 3, 2001. The e-mail was addressed to Mr. Campos with copies to Ms. Wright, Ms. Sawaya and Mr. Helgeson. (SFUSD Exh. 21.)

246. The April 3, 2001 draft response to the LOI (the "Draft Response") provided lengthy explanations to each of the five questions posited by the Commission. (SFUSD Exh. 21.)

**A. The Draft Response Contained Statements That Were Contrary to Information Known Only By the Sanchez Law Firm Related to Mr. Ramirez's 1997 Certifications**

247. With respect to LOI Question No.1, regarding whether ownership reports were completed and placed in the PIF as of August 1, 1997, the Draft Response prepared by the Sanchez Law Firm stated: "Yes. On August 1, 1997, the KALW(FM) PIF contained all of the ownership reports." (SFUSD Exh. 21 at 2.)

248. The Draft Response to Question 1 further explained that there was "no basis for SFUSD and KALW's present management ... to disbelieve Mr. Ramirez's certification [that the PIF was complete]." (SFUSD Exh. 21 at 2.) The Draft Response further described that when present management, *i.e.*, Mr. Helgeson and Ms. Sawaya, reviewed the PIF in order to respond to the LOI, supplemental ownership reports for the years 1991, 1993 and 1995 were in the PIF. The Draft Response acknowledged that the 1995 Report was dated December 10, 1997. The Draft Response further conceded that: "[i]t appears, therefore, that this particular report for the 1995 board changes was not placed in the PIF until December 1997," *e.g.*, not within 30 days of